THE HON'BLE SRI JUSTICE C.V. RAMULU

Thursday, 8th day of March,2007

W.P.No.14213 of 2005

Between:-

M. Sreenivasa Reddy … Petitioner

and

Union of India, rep. by its Secretary, Ministry of Telecommunications, Door Sanchar Bhavan, New Delhi-110 001 & others … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.14213 of 2005

ORDER:

This Writ Petition is filed seeking a Certiorari to call for the records relating to the Order dated 30-4-2005 passed by the 3rd respondent and to quash the same; consequently to direct the respondents to forthwith consider the candidature of the petitioner for promotion to the post of Junior Telecom Officer (JTO) against the vacancies, which have been diverted from the direct recruitment quota/pool and for consequential benefits.

It is the case of the petitioner that he was initially appointed as a Telephone Operator in the year 1983 and was subsequently promoted as Senior Telecom Operative Assistant. He was further promoted as Telephone Supervisor (Operations) with effect from 1-8-2000 and presently working as such at AOTR CC (North) in the Office of the General Manager (North), Hyderabad Telecom District, Hyderabad. The service conditions of the employees of the Department of Telecommunications are being regulated through the process of Recruitment Rules framed from time to time. The post of JTO is included in Group 'B' Gazetted category posts and the method and manner of recruitment is regulated under the Junior Telecom Officers' Recruitment Rules,1996, which have been framed in terms of the Proviso to Article 309 of the Constitution of India. Under Rule 3 of the said Rules, it has been specifically pointed out that the method of recruitment and other relevant criteria to the post of JTO is as specified

in columns 5 to 14 of the Schedule appended to the Rules. Column No.11 of the Schedule provides that 50% of the posts are to be filled-up by way of direct recruitment through a competitive examination and the balance of 50% of the posts by way of promotions/transfers as indicated under column No.12. Under column No.12, it amplified that 50% of the vacancies are to be filled-up by way of promotion/transfer of Departmental candidates, which is regulated in the following manner:

(i) 15% by promotion of departmental candidates through a competitive examination;

(ii) 35% by promotion/transfer of Transmission Assistants/Wireless Operators/Auto Exchange Assistants/Phone Inspectors/Telecom Technical Assistants.

Insofar as 15% promotions by competitive examination are concerned, the Group 'C' employees in the Department whose scale of pay is less than that of the JTOs are eligible for such promotions, provided they are borne on the regular establishment and working in Telecom Engineering Branch of the Department including those working in the Office of the Chief General Manager, Telecommunication Circles/Districts and other than certain other accepted categories therein. Petitioner is a Group 'C' employee working under the Telecom Circles/District and he does not fall within the excepted categories therein. Thus, he is fully eligible and qualified for being considered for promotion to the post of JTO against 15% quota of intake through a competitive examination. The Recruitment Rules of 1996 have been superseded with the Rules published through Gazette GSR 620(E), dated 31-8-1999. These Rules are called 'Junior Telecom Officers' Recruitment Rules,1999'. The Department of Telecommunications took a policy decision to fill up the vacancies of JTOs existing upto 31-8-1999 by following the superseded 1996 Recruitment Rules only.

The Departmental Competitive Examination for regulating the 15% quota of JTOs was scheduled to be held on 10th and 11th of June,2000. The minimum qualifying marks required to be secured in each of four papers by OC candidates was 40. However, the said examination was postponed and ultimately it was held on 16th and 17th of September,2000. Petitioner appeared for the said examination. In view of very high standards of the question papers set, he was declared to have not qualified in the examination. Further, on 19-5-1999, the qualifying screening test for promotion was announced and it was conducted on 8-1-2000. Based on the results announced for 35% qualifying screening test and the 15% limited competitive examination, the available posts of JTOs have been filled up. For regulating the other 50% of intake of JTOs through open market by way of direct recruitment, an examination was conducted on 9-6-2002. The results were published and several candidates, who have been qualified in the examination, have been recruited. Insofar as the State of Andhra Pradesh is concerned, out of 620 candidates selected and appointed from open market by way of direct recruitment based on the results announced in the test conducted on 9-6-2002, only 540 candidates have preferred to take the job and reported for undergoing necessary training. The total strength of the JTOs in Andhra Pradesh Circle in the year 2002 was 3900. After inducting 540 directly recruited JTOs, the total number of JTOs was only 2200 leaving large number of vacancies i.e. 1700. Similar instances came to be noticed from other Circles in the country. This has prompted the Bharat Sanchar Nigam Limited (BSNL) to take a decision of diverting the posts meant to be filled up from the open market by direct recruitment, in favour of the promotees. Consequently, four different orders dated 9-8-2001, 2-4-2002, 7-5-2003 and 18-5-2004 have been passed each time

diverting 500 vacancies of JTOs from the direct recruitment to departmental quota. These orders are self-explanatory. In all, 2000 vacancies have been diverted to departmental quota. Further, the BSNL has authorized to relax the standard for purpose of declaring the additional candidates as qualified under 15% Competitive Examination quota. As a result, it was decided that the candidates, who have secured 120 marks in aggregate out of 400 are treated as qualified for being promoted under 15% intake. On the basis of the relaxed norms, the available 117 posts originally meant for 15% quota of competitive examination have all been filled up. The last candidate promoted under 15% competitive quota was one Y.V. Subrahmaniyam, who said to have secured 161 marks. Since the BSNL has considered that the 15% originally identified quota is full with the appointment of Y.V.Subrahmaniyam, the rest of the candidates like the petitioner, though secured more than 120 marks in aggregate, were not promoted on the plea that the original quota of 15% is full. The petitioner has secured 159 marks in the examination. It is his case that the action of the respondents in not making provision for 15% reservation in 2000 diverted vacancies is arbitrary and illegal. Had the 15% vacancies are reserved in 2000 diverted vacancies, the petitioner would be the first person to get promotion as per the marks secured by him in the qualifying examination held on 8-1-2000. Earlier, he filed a Writ Petition being W.P.No.17085 of 2004 questioning the action of the respondents in not making provision for 15% reservation in the 2000 diverted vacancies and the same was disposed of on 18-1-2005 directing the respondents to consider the case of the petitioner for promotion to the post of JTO under 15% quota in accordance with Rules. Thereafter, the 3rd respondent has considered the case of the petitioner and issued the Proceedings

dated 30-4-2005 holding that diversion of JTO posts to 15% quota for promotees is not acceptable. Challenging the said Proceedings, the present Writ Petition is filed.

A detailed counter affidavit has been filed on behalf of the respondents denying the allegations made by the petitioner. It is asserted that the BSNL has been formed by the Government with effect from 1-10-2000 transferring all the employees of the Department of Telecom (DOT) on deemed deputation. Subsequently, the Board of BSNL took a decision to divert 500 vacant posts of JTOs from direct recruitment quota to 35% Departmental quota from the candidates already selected and waiting for JTO training. The vacant posts allotted to each region was stipulated in Proceedings dated 9-8-2000 of the 2nd respondent. Similarly, another 500 posts of JTOs from the direct recruitment quota have been diverted to 35% departmental quota by Proceedings dated 2-4-2002. Subsequently, by Proceedings dated 7-5-2003 and 18-5-2004 another 1000 posts of JTOs from direct recruitment quota were diverted to 35% departmental quota. For the 35% quota meant for the departmental candidates, only a screening test is required and the same was conducted and thereafter, a waiting list was prepared to fill up the vacancies as and when arise. To accommodate such of the staff, who were in the waiting list to be sent for training, the direct recruitment quota has been diverted as per the policy decision taken by the Board and as such, the contention of the petitioner is unsustainable and liable to be rejected. Further, all the vacancies coming under 15% quota upto 31-8-1999 were duly filled up even granting relaxation of the standards under the recruitment rules of 1999, which envisage filling up of the quota of 15% by competitive examination and as such, the claim of the petitioner for further consideration under 15% quota is still available. Therefore, the

contention of the petitioner that his claim for selection to JTO post has been forfeited by the authorities is incorrect and the same is liable to be rejected. The diversion of direct recruitment quota is only a temporary measure and subsequent vacancies that arose in 35% quota will be reverted back to direct recruitment quota. The policy decision taken by the Department to fill up the vacant posts under direct recruitment quota by the departmental candidates in the waiting list, for the smooth functioning of the administration cannot be faulted with, since the petitioner's case was duly considered and could not be promoted as he could not qualify in the selection. The policy decision was taken to streamline the administration and to cope up with the multifarious activities undertaken by the Department. Further, the quota meant for the persons like the petitioner is available every year and as such, the consideration of his case for the said post is not forfeited. However, he has to undergo the process of selection as envisaged under the Rules and the earlier notifications and selections have no bearing for the same. The claim of the petitioner that the candidates, who have secured upto 120 marks in the earlier examination, can be considered against 15% Limited Departmental Competitive Examination quota etc., cannot be accepted as the said relaxation was granted only against the examinations held during 1999-2000 and for the subsequent examination, the petitioner has to fulfil the requirements under the Recruitment Rules notified on 31-8-1999.

Heard both sides.

It appears, the only grievance of the petitioner is that every year 500 posts of JTOs meant for direct recruitment from open market were diverted to be filled up by the candidates, who are eligible for 35% quota i.e. departmental candidates (promotees). Therefore, the

diversion of the entire lot of 500 vacancies each time to be filled up with the candidates, who are eligible for 35% quota is arbitrary, illegal and irrational. Whenever 500 vacancies meant to be filled up by direct recruitment from open market are diverted for 35% promotional quota, the Department ought to have considered diverting 15% among them for being filled up by the limited departmental competitive examination quota. Such a course of action was not adopted by the respondents; therefore, the same is illegal.

Learned counsel for the petitioner invited attention of the Court to 1996 Recruitment Rules, particularly, Column No.11, which reads as under:

> "(11) Method of recruitment, whether by direct recruitment or by promotion or deputation/transfer and percentage of vacancies to be filled by various methods:-
>
> (i) 50% by direct recruitment through a competitive examination in accordance with the instructions issued by the Department in this behalf;
>
> (ii) 50% by promotion/transfer as indicated under column 12 of the schedule.
>
> (12) In case of recruitment by promotion/deputation/transfer, grades from which promotion/deputation transfer to be made:
>
> (1) 50% by promotion/transfer of departmental candidates referred to item (ii) column II will be regulated as under:
>
> i. 15% by promotion of departmental candidates through a competitive examination;
>
> ii. 35% by promotion/transfer of Transmission Assistants/Wireless Operators/Auto Exchange Assistants/Phone Inspectors/Telecom Technical Assistants."

and submitted that whenever the Board diverted any vacancies meant for direct recruitment from open market, they should necessarily reserve 15% of the vacancies for Limited Departmental Competitive

Examination candidates and the remaining 35% of the vacancies may be given for promotees. When asked, learned counsel for the petitioner, could not cite any Rule in this regard. It is his contention that since the vacancies meant for direct recruitment from the open market are diverted, the department ought to have rationally allotted 15% for Limited Departmental Competitive Examination candidates and non-reserving such vacancies has resulted in injustice to the petitioner. Even this argument advanced by the learned counsel for the petitioner is not supported by any Rules. The Department has explained that due to multifarious activities undertaken by the Department and due to exigencies of the work, it had diverted 500 vacancies every year for being filled up through 35% departmental quota. That being the policy, which was not questioned by anybody, it cannot be said that the petitioner has a right to plead that 15% of the vacancies should have been necessarily reserved for departmental candidates, which are filled up through a competitive examination. Further, in the departmental examination that was held on 8-1-2000 in view of the fact that very few people were qualified, there was a relaxation in the benchmark prescribed; therefore, the petitioner also became eligible to compete with others, since he has obtained 159 marks in the test. But, it is unfortunate that the petitioner could not be selected since the last candidate selected, namely Y.V. Subrahmaniyam got 161 marks. It cannot be said that the petitioner can claim, as a matter of right, for allotment of 15% of the vacancies diverted from the direct recruitment quota to 35% quota meant for promotees. In fact, it was asserted in the counter that these 500 (out of 2000) vacancies were to be reverted back for direct recruitment for open market. This is purely a policy matter and no interference can be made by this Court. In fact, no right is accrued to the petitioner either in

the recruitment made in the year 2000 or thereafter. The respondents have asserted that as and when 15% recruitment is taken up, petitioner would be entitled to compete with others for the purpose of promotion to the post of JTO.

For all the above reasons, the Writ Petition is devoid of any merit and is liable to be dismissed; accordingly, it is dismissed. No costs.

08-3-2007

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